

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Michael & Janice Gilbert)
Dist. 19, Map 91, Control Map 91, Parcel 53.05,) Wilson County
S.I. 000)
Residential Property)
Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$35,300 | \$ -0- | \$35,300 | \$8,825 |

An appeal has been filed on behalf of the property owners with the State Board of Equalization on July 19, 2005.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on April 5, 2006 at the Wilson County Property Assessor's Office. Present at the hearing were Michael Gilbert and his brother, Donald Gilbert, who represented themselves, Cindy Brown, Wilson County Property Assessor's Office, Jimmy Locke, Wilson County Property Assessor, with Jeff White and Kevin Thompson, also of the Wilson County Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a vacant lot located on Sparta Pike in Lebanon, Tennessee.

The taxpayer, Mr. Gilbert, contends that the property is worth less than \$7,140. Mr. Gilbert has several reasons why he feels the property is over valued: "The plat was registered August 15, 1983 at the Register of Deeds Office. The Danby Drive that is shown as an existing road, that road does not exist and was never built at the time of register, and does not exist today (April 5, 2006). At this time, the land went from agricultural to residential because property was sold in buildable lots.¹"

Mr. Gilbert also claims that this lot was part of a larger parcel of land originally owned by his parents.² Mr. Gilbert contends that the way the property was subdivided by his parents, his parcel of land is landlocked and virtually worthless.³

Mr. Gilbert requested and subpoenaed Mr. Robert Dedmon, the County Mayor and Mr. Michael Jennings, the County Attorney, to substantiate his additional claim that there was illegalities and collusion on behalf of the county for the increase in his assessment.

¹ Exhibit #4 from the taxpayer.

² This is a 10.05 acre tract of land.

³ Note the adjacent parcel is owned by his brother, Donald Gilbert.

Mr. Gilbert also believes that his land is less valuable because the condition of the soil is not amenable to building (exhibits 9 & 10).⁴ Mr. Gilbert further complained that the value of his property is affected by his inability to obtain a "variance" to use his property. Mr. Gilbert stated that "it is not his responsibility to go anywhere to get an easement" for the property use. Further, since the "road does not exist [Danby Drive changed to Danby Circle], it was illegal for the County Commission to approve the distribution by his parents". Mr. Gilbert also believes the property should be exempt.⁵

Mr. Gilbert constantly argued that the value of his land is greatly diminished because of the lack of easy egress ad ingress. Mr. Gilbert refused to accept from Mr. Locke or the administrative judge, the concept of easement by necessity. Mr. Gilbert believes that he is the victim of illegal government action.

The State of Tennessee has a procedure for condemnation for an easement across land obstructing access to a public road and is established by Tenn. Code Ann. § 54-14-101(a)(1).

When the lands of any person are surrounded or enclosed by the lands of any other person or persons who refuse to allow to such a person a private road to pass to or **from such person's lands**, it is the duty of the county court, **on petition of any person whose land is so surrounded**, to appoint a jury of view, who shall, on oath, view the premises, and lay off and mark a road through the land of such person or persons refusing, as aforementioned, in such manner as to do the least possible injury to such persons, and report the same to the next session of the court, **which court shall have power to grant an order to the petitioner to open such road, not exceeding twenty-five feet (25') wide, and keep the same in repair**. If any person thereafter shuts up or obstructs the road, such person shall be liable for all the penalties to which any person is liable, by law, for obstructing public roads., The damage adjudged by the jury shall, in all cases, be paid by the person applying for such order, together with the costs of summoning and impaneling the jury. Gates may be erected on the roads. In counties with a metropolitan form of government, the maximum permissible width for a road under this section shall not exceed fifteen feet (15'). (emphasis supplied)

The procedure is clearly laid out in the statute and case law, the fact that Mr. Gilbert believes that "it is not his responsibility" is clearly erroneous.

The Wilson County Assessor's Office, through its representatives, contends that the property should be valued at \$39,300.

While the presentation by the taxpayer shows that a lot of time and effort was put into preparing for this hearing, the germane issue is the value of the property as of January 1, 2005.

⁴ Mr. Gilbert did produce a copy of an article describing various soil conditions but did not produce any reports or soil analysis for this property.

⁵ Mr. Gilbert has never filed a request with the State Board of Equalization for an exemption on this property.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 81. (11th ed. 1996). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) **the amount and reliability of the data collected in each approach**; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 601-607.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 22. *The Aero structures Corporation, Davidson County* (Tax Year 1997)

The property in question is a 10.5 acre tract of vacant land. To determine its market value we must look to the properties highest and best use.

The Appraisal Institute is describing the process for determining their value analyzing it by stating:

In determining the highest and best use of the property, four (4) criteria must be satisfied; is it physically possible, is it legally permissible, is it functionally feasible and is it maximally productive? The highest and best use that fulfills all four criteria is the highest and best use. *The Appraisal of Real Estate*, 12th ed., 2001.

Mr. Gilbert has tangentially attempted to do this by arguing the lands value is greatly different than the county's assessment but he has not presented the correct analysis. While he talks of access problems, soil quality and the lands utilities, he has presented no solid evidence.

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$39,300 based upon the presumption of correctness attaching to the decision of the Davidson County Board of Equalization.

Since the taxpayer is appealing from the determination of the Wilson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

With respect to the issue of market value, the administrative judge finds that Mr. Gilbert simply introduced insufficient evidence to overcome the presumption of correctness from the county board and to affirmatively establish a different market value of subject property as of January 1, 2005, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

In the opinion of the administrative judge based on the analytical interpretation of the data, the taxpayer did not overcome the burden, the County's presentation support the correctness of the County Board's values.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$35,300 | \$ -0- | \$35,300 | \$8,825 |

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

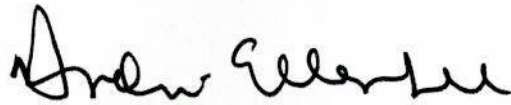
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of June, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Don Gilbert
Jimmy Locke, Assessor of Property